

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Newport News Division

DAVID ANTHONY RUNYON,

Petitioner,

v.

CIVIL NO. 4:15cv108

[ORIGINAL CRIMINAL NO. 4:08cr16]

UNITED STATES OF AMERICA,

Respondent.

ORDER

This matter comes before the court on Petitioner's "Sworn Statement of Returned Documents" ("Sworn Statement"), ECF No. 647, and "Petitioner's Motion to Allow Attorney Brace to Withdraw, and to Appoint Substitute Counsel" ("Motion to Withdraw"), ECF No. 648, filed by counsel on November 15 and 16, 2021, respectively. For the reasons explained in this Order, the court **GRANTS** the Motion to Withdraw and **ACCEPTS** the Sworn Statement, with the caveat provided below.

I. MOTION TO WITHDRAW

Petitioner is currently represented by Michele J. Brace, of the Virginia Capital Representation Resource Center, and Dana Catherine Hansen Chavis, of Federal Defender Services of Eastern Tennessee, Inc. In the Motion to Withdraw, Ms. Brace seeks leave to withdraw as Petitioner's counsel for medical reasons. ECF No. 648 at 1. She also explains that her colleague at the Virginia Capital Representation Resource Center, Elizabeth J. Peiffer, is

prepared to step in as substitute counsel to represent Petitioner in this matter. Id. at 1-2. Ms. Peiffer is a member of the bar of this court, the United States Court of Appeals for the Fourth Circuit, and the United States Supreme Court, and she has extensive experience representing petitioners in federal habeas corpus proceedings. Id. at Ex. 1. Ms. Brace represents that the substitution "is unlikely to have any effect on the ultimate date for the evidentiary hearing in [this] matter." Id. at 2. For good cause shown, the court **GRANTS** the Motion to Withdraw and **APPOINTS** Ms. Peiffer as substitute counsel to represent Petitioner in his ongoing habeas corpus proceeding.¹

II. SWORN STATEMENT

In Memorandum Orders entered on April 7, 2015, and October 2, 2015, the court granted Petitioner's request to obtain copies of certain sealed jury selection records ("Records"). ECF No. 422 at 3, 5-7; ECF No. 475 at 15-16. The court entered another Memorandum Order on October 26, 2015, granting Petitioner's request to "make a single in-kind copy of [the Records], for use by co-counsel, Ms. Chavis." ECF No. 481 at 6. The court also explained as follows:

[U]pon completion of the habeas litigation, with the return to the court of [the Records], both Ms. Brace and

¹ The Motion to Withdraw was made orally at the Status Conference held on November 15, 2021, with both Petitioner and the United States Attorney present. No objection was made to the withdrawal of Ms. Brace for health reasons.

Ms. Chavis will be required to submit "a sworn statement that the [Records] have been maintained under seal, and no copies thereof of any nature - paper, electronic, or otherwise - have been made or exist" and that "no juror contact has been made, directly or indirectly, through someone else, or by any means."

Id. (emphasis added) (quoting ECF No. 475 at 16).

On November 15, 2021, Ms. Brace submitted a sworn statement explaining that she returned the following items to the court:

- (1) Two sealed cartons that together contain the juror questionnaires of all 243 prospective jurors who completed a questionnaire in this case.
- (2) One sealed paper envelope containing the Court's strike lists, identifying each prospective juror in this case who was struck peremptorily and by which party.
- (3) Two sealed envelopes (one of which is padded) that together contain redacted CDs of the 2005 and 2007 master and qualified jury wheels for Newport News and Norfolk, with plus statistical information about the grand jury, statistical information about the individuals drawn for the petit jury venire, and the trial court's list of reasons for any disqualifications, excusals or exemptions.

ECF No. 647 at 2. Ms. Brace also included a statement explaining her compliance with this court's orders concerning reproduction of the Records and contact with jurors. Id. at 1-3.²

The court **ACCEPTS** the Sworn Statement and **FINDS** that Ms. Brace has complied with this court's orders concerning the Records.


² Ms. Brace notified that court that a copy of "62 juror questionnaires from the first day of voir dire" was created to complete the record for Petitioner's proceedings before the Fourth Circuit Court of Appeals. See ECF No. 647 at 1-2. She further noted that the questionnaires "were reprinted in sealed volumes of the

However, the court notes that Ms. Chavis's copy of the Records is still outstanding. Ms. Chavis is therefore **DIRECTED** to return her copy of the Records and to submit the required affidavit(1) upon the conclusion of Petitioner's habeas proceedings, or (2) when the Records are no longer needed for such proceedings, whichever is earlier.

III. CONCLUSION

For good cause shown, the court **GRANTS** Petitioner's Motion to Withdraw and **ACCEPTS** the Sworn Statement, with the caveat noted above. The Clerk is **DIRECTED** to forward a copy of this Order to the United States Attorney at Newport News and counsel for Petitioner.

IT IS SO ORDERED.

/s/ 
Rebecca Beach Smith
Senior United States District Judge

REBECCA BEACH SMITH
SENIOR UNITED STATES DISTRICT JUDGE

November 19, 2021

Joint Appendix" for Petitioner's appeal. Id. at 1. This was permitted by this court's September 15, 2017, order. See ECF No. 597.